IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6162 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANJITSINH JORUBHA VAGHELA

Versus

STATE OF GUJARAT,THROUGH SECRETARY

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 22/08/2000

ORAL JUDGEMENT

The petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the legality of the order of detention dt. 15th January, 2000 (which is annexed at Page 13) passed by the respondent no.2 -Commissioner of Police, Rajkot detaining

the petitoner on the ground that the petitioner is a "dangerous person" within the meaning of Sec.2(C) of the Gujarat Prevention of Antisocial Activities Act, 1985 (the same will be referred to hereinafter as the PASA Act).

2. As per Grounds (pages 14 to 23), the detaining authority (respondent no.2 -Commissioner of Police, Rajkot) has mentioned in it four criminal cases registered against the detenu, the details of which can be summarised as follows:

(i) Rajkot Taluka Police Station CR.No. I 372/97 registered on 27th June, 1997 for the offences punishable under Secs. 323-324-365-342-504-506(2) and 114 of Indian Penal Code and Sec.37(1) read with Sec. 135 of the Bombay Police Act. The said case is pending for trial in the competent court.

(ii) Rajkot Pradyumannagar Police Station CR.No. I 305/98 registered on 1st June, 1998 for the offences punishable under Secs. 143-365-324-452-323-506 of Indian Penal Code and Sec.37(1) read with Sec.135 of the Bombay Police Act. The said case is pending for trial in the competent court.

(iii) Rajkot "A" Division Police Station CR.No. I 46/99 registered on 27th January, 1999 for the offences punishable under Sec.323-324 and 114 of Indian Penal Code and Sec.37(1) read with Sec. 135 of the Bombay Police Act. The said case is also pending for trial in the competent court.

(iv) Rajkot Pradyumannagar Police Station CR.No. I 646/99 registered on 19th October, 1999 for the offences punishable under Secs. 307 of Indian Penal Code and Secs. 37(1) read with Sec. 135 of the Bombay Police Act. The said case is pending for trial in the competent court.

3. It is stated in the grounds of detention (Pages 14 to 23) that the detaining authority has taken into consideration the statements of two witnesses whose identity has not been disclosed by claiming privilege under Sec. 9(2) of the PASA Act. Said statements of two witnesses were recorded on 13th January, 2000 and have been verified by the detaining authority on 14th January, 2000. It appears that on the next day i.e. on 15th January, 2000, the detaining authority has passed the order of detention against the detenu. It is further the case of the petitioner that the order of detention was

actually executed on him on 15th January, 2000.

4. It may be noted that in this case, Rule was issued against each of the respondents but none of them has filed any affidavit-in-reply. Shri H.R.Prajapati, the learned advocate for the petitioner/detenu has taken the certain grounds to challenge an order of detention in his petition which are supported by the affidavit of the petitioner. These grounds are not controverted by any of the respondents.

5. Shri Prajapati has argued that in this case, four criminal cases are referred to by the detaining authority for his subjective satisfaction to pass order of detention. Out of these four cases, the last fourth case is registered against the detenu vide Pradyumannagar Police Station CR.No. I 646/99 on 19th October, 1999. As per his arguments, the petitioner -detenu had filed Criminal Misc. Application No. 1225 of 1999 in Sessions Court for releasing him on bail and the detenu was released on bail on 3rd November, 1999 by the learned Additional Sessions Judge, Rajkot. He has further argued that after 3/11/1999 not a single untoward incident took place and about two and half months after 3/11/1999, the detaining authority passed an order of detention on 15/1/2000. He has argued that there is a delay in passing the order of detention after alleged fourth case. No explanation has been given by the detaining authority for such delay occasioned for passing the order of detention, and therefore, subjective satisfaction of the detaining authority is vitiated. Unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. Only on this ground, the order of detention is bad in law because the detaining authority has not explained the delay for passing the detention order.

6. I have heard Shri U.R.Bhatt, learned AGP for the respondents at length. He has argued that there are documents and papers with him but they are not brought on record by filing affidavit-in- reply by the concerned authority. He requested this court to refer the file of case papers which is with him. Practice to look file with APP has been depricated by Hon'ble Apex Court. When the respondents have failed to controvert the facts stated by the petitioner in his petition by filing affidavit in reply, this court is satisfied that the order of detention is bad in law only on the aforesaid ground of delay, which is not explained by the detaining authority.

6. As held in the case of ELESH NANDUBHAI PATEL VS. COMMISSIONER OF POLICE, AHMEDABAD CITY & OTHERS, reported in 1997(1) G.L.H. 381, the order of detention is bad in law and it requires to be quashed and set aside.

7. Shri H.R.Prajapati, the learned advocate for the petitioner detenu has argued on other grounds on which the order of detention is challenged, but when this court finds that it is sufficient to hold on the first ground as discussed hereinabove, that the order of detention is bad in law and illegal, another grounds are not required to be discussed. and therefore, other grounds are not discussed.

8. In view of the facts stated hereinabove, this writ petition deserves to be allowed, and accordingly, it is allowed. The order of detention dt. 15th January, 2000 passed by respondent no.2 which is annexed at Page : 13 is hereby quashed and set aside. The detenu is ordered to be released forth with, if he is not required in custody for any other criminal case. Rule is made absolute. Direct service is permitted.

Date; 22/8/2000. (H.H.MEHTA,J.)
ccshah